JAN 10 1994
OFFICE OF THE CLERK

No. 93-860

IN THE

Supreme Court of the United States

October Term, 1993

SHIRLEY IVY, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF DONALD IVY, DECEASED, ET AL.,
Petitioners,

v.

DIAMOND SHAMROCK CHEMICALS COMPANY, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF *AMICI CURIAE* OF THE STATES OF TEXAS, ALABAMA, ALASKA, ARIZONA, ARKANSAS, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, HAWAII, IDAHO, ILLINOIS, INDIANA, IOWA, KANSAS, LOUISIANA, MAINE, MARYLAND, MICHIGAN, MINNESOTA, MISSISSIPPI, MONTANA, NEBRASKA, NEW HAMPSHIRE, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, NORTH DAKOTA, OHIO, OKLAHOMA, RHODE ISLAND, SOUTH DAKOTA, TENNESSEE, UTAH, VERMONT, WEST VIRGINIA, WISCONSIN AND WYOMING; THE COMMONWEALTHS OF KENTUCKY, MASSACHUSETTS, PENNSYLVANIA AND VIRGINIA; AND THE DISTRICT OF COLUMBIA, IN SUPPORT OF CERTIORARI

JAMES H. EVANS
ATTORNEY GENERAL OF ALABAMA
11 South Union Street
Montgomery, Alabama 36130
(205) 242-7300

DAN MORALES
Counsel of Record
ATTORNEY GENERAL OF TEXAS
Capitol Station, Box 12548
Austin, TX 78711
(512) 463-2191

[Additional Counsel Listed Inside Cover]

January 6, 1994

BEST AVAILABLE COPY

CHARLES E. COLE
ATTORNEY GENERAL OF
ALASKA
Post Office Box 110300
Juneau, AK 99811
(907) 465-3600

GRANT WOODS
ATTORNEY GENERAL OF
ARIZONA
1275 West Washington Street
Phoenix, AZ 85007
(602) 542-5025

WINSTON BRYANT
ATTORNEY GENERAL OF
ARKANSAS
200 Tower Bldg., 323 Center St.
Little Rock, AR 72201
(501) 682-2007

DANIEL E. LUNGREN
ATTORNEY GENERAL OF
CALIFORNIA
1515 K Street
Sacramento, CA 95814
(916) 324-5437

GALE A. NORTON
ATTORNEY GENERAL OF
COLORADO
1525 Sherman Street
Denver, CO 80203
(303) 866-3052

RICHARD BLUMENTHAL
ATTORNEY GENERAL OF
CONNECTICUT
55 Elm Street
Hartford, CT 06106
(203) 566-7279

CHARLES M. OBERLEY, III
ATTORNEY GENERAL OF
DELAWARE
820 North French Street
Wilmington, DE 19801
(302) 577-2500

JOHN PAYTON
CORPORATION COUNSEL OF
THE DISTRICT OF COLUMBIA
441 Fourth Street, N.W.
Washington, D.C. 20001
(202) 727-6252

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL OF
FLORIDA
The Capitol
Tallahassee, FL 32399
(404) 488-1573

MICHAEL J. BOWERS
ATTORNEY GENERAL OF
GEORGIA
40 Capitol Square, S.W.
Atlanta, GA 30334
(404) 656-4585

ROBERT A. MARKS
ATTORNEY GENERAL OF
HAWAII
425 Queen Street
Honolulu, HI 96813
(808) 586-1360

LARRY ECHOHAWK
ATTORNEY GENERAL OF
IDAHO
Statehouse, Room 210
Boise, ID 83720
(208) 334-2400

ROLAND W. BURRIS
ATTORNEY GENERAL OF
ILLINOIS
100 West Randolph Street
Chicago, IL 60601
(312) 814-2503

PAMELA FANNING CARTER
ATTORNEY GENERAL OF
INDIANA
219 State House
Indianapolis, IN 46204
(317) 232-6201

BONNIE J. CAMPBELL
ATTORNEY GENERAL OF
IOWA
Hoover State Office Building
Des Moines, IA 50319
(515) 281-5164

ROBERT T. STEPHAN
ATTORNEY GENERAL OF
KANSAS
Kansas Judicial Center
Topeka, KS 66612
(913) 296-2215

CHRIS GORMAN
ATTORNEY GENERAL OF
KENTUCKY
Capitol Building, Suite 116
Frankfort, KY 40601
(502) 564-4002

RICHARD P. IEYOUB
ATTORNEY GENERAL OF
LOUISIANA
State Capitol
Baton Rouge, LA 70804
(504) 342-7013

MICHAEL E. CARPENTER
ATTORNEY GENERAL OF
MAINE
State House Station #6
Augusta, ME 04333
(207) 626-8800

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL OF
MARYLAND
200 St. Paul Street
Baltimore, MD 21202
(410) 576-6300

SCOTT HARSHBARGER
ATTORNEY GENERAL OF
MASSACHUSETTS
One Ashburton Place
Boston, MA 02108
(617) 727-2200

FRANK J. KELLEY
ATTORNEY GENERAL OF
MICHIGAN
525 West Ottawa Street
Lansing, MI 48913
(517) 373-1110

HUBERT H. HUMPHREY III
ATTORNEY GENERAL OF
MINNESOTA
102 State Capitol
St. Paul, MN 55155
(612) 297-4272

MIKE MOORE
ATTORNEY GENERAL OF
MISSISSIPPI
450 High Street
Jackson, MS 39205
(601) 359-3680

JOSEPH P. MAZUREK
ATTORNEY GENERAL OF
MONTANA
215 North Sanders
Helena, MT 59620
(406) 444-2026

JEFFREY R. HOWARD
ATTORNEY GENERAL OF
NEW HAMPSHIRE
25 Capitol Street
Concord, NH 03301
(603) 271-3658

TOM UDALL
ATTORNEY GENERAL OF
NEW MEXICO
Post Office Drawer 1508
Santa Fe, NM 87504
(505) 827-6000

MICHAEL F. EASLEY
ATTORNEY GENERAL OF
NORTH CAROLINA
Post Office Box 629
Raleigh, NC 27602
(919) 733-3377

LEE FISHER
ATTORNEY GENERAL OF
OHIO
30 East Broad St., 17th Floor
Columbus, OH 43266
(614) 466-3376

ERNEST D. PREATE, JR.
ATTORNEY GENERAL OF
PENNSYLVANIA
Strawberry Square
Harrisburg, PA 17120
(717) 787-3391

DON STENBERG
ATTORNEY GENERAL OF
NEBRASKA
2115 State Capitol
Lincoln, NE 68509
(402) 471-2682

FREDERICK P. DeVESA
ACTING ATTORNEY GENERAL
OF NEW JERSEY
R.J. Hughes Justice Complex
Trenton, NJ 08625
(609) 292-4925

G. OLIVER KOPPELL
ATTORNEY GENERAL OF
NEW YORK
State Capitol
Albany, NY 12224
(518) 474-8101

HEIDI HEITKAMP
ATTORNEY GENERAL OF
NORTH DAKOTA
600 East Boulevard Avenue
Bismarck, ND 58505
(701) 224-2210

SUSAN B. LOVING
ATTORNEY GENERAL OF
OKLAHOMA
2300 N. Lincoln Blvd., Ste. 112
Oklahoma City, OK 73105
(405) 521-3921

JEFFREY B. PINE
ATTORNEY GENERAL OF
RHODE ISLAND
72 Pine Street
Providence, RI 02903
(401) 274-4400

MARK BARNETT
ATTORNEY GENERAL OF
SOUTH DAKOTA
500 East Capitol Avenue
Pierre, SD 57501
(605) 773-3215

CHARLES W. BURSON
ATTORNEY GENERAL OF
TENNESSEE
500 Charlotte Avenue
Nashville, TN 37243
(615) 741-6474

JAN GRAHAM
ATTORNEY GENERAL OF
UTAH
236 State Capitol
Salt Lake City, UT 84114
(801) 538-9600

JEFFREY L. AMESTOY
ATTORNEY GENERAL OF
VERMONT
109 State Street
Montpelier, VT 05609
(802) 828-3171

STEPHEN D. ROSENTHAL
ATTORNEY GENERAL OF
VIRGINIA
101 North 8th Street
Richmond, VA 23219
(804) 786-2435

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL OF
WEST VIRGINIA
State Capitol, Room E-26
Charleston, WV 25305
(304) 558-2021

JAMES E. DOYLE
ATTORNEY GENERAL OF
WISCONSIN
123 West Washington Avenue
Madison, WI 53707
(608) 266-1221

JOSEPH B. MEYER
ATTORNEY GENERAL OF
WYOMING
123 Capitol Building
Cheyenne, WY 82002
(307) 777-7841

Counsel for *Amici Curiae*

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTEREST OF *AMICI* 1

INTRODUCTION AND
SUMMARY OF THE ARGUMENT 2

ARGUMENT 4

CERTIORARI SHOULD BE GRANTED IN ORDER TO RESTRAIN THE LOWER FEDERAL COURTS FROM CREATING THEIR OWN REMOVAL JURISDICTION AND, IN DOING SO, INTRUDING UPON THE RIGHTS OF THE STATES AND DISREGARDING THE PRINCIPLES OF JUDICIAL FEDERALISM 4

CONCLUSION 12

TABLE OF AUTHORITIES

Cases: **Page**

American Fire & Cas. Co. v. Finn, 341 U.S. 6 (1951) . . 10
Atascadero St. Hosp. v. Scanlon, 473 U.S. 234 (1985) . . . 7
Butler v. McKellar, 494 U.S. 407 (1990) 7
Chick Kam Choo v. Exxon Corp., 486 U.S. 140 (1988) . . . 7
Donovan v. City of Dallas, 377 U.S. 408 (1964) 8
Edelman v. Jordan, 415 U.S. 651 (1974) 7
Employees v. Dep't of Public Health and Welfare, 411 U.S. 279 (1973) 7
Erie R. Co. v. Tompkins, 304 U.S. 64 (1938) 7
Franchise Tax Bd. v. Laborers Vacation Trust, 463 U.S. 1 (1983) 8
Gagne v. Norton, 453 A.2d 1162 (Conn. 1983) 8
Gregory v. Ashcroft, 111 S.Ct 2395 (1991) 10
Hans v. Louisiana, 134 U.S. 1 (1890) 7
In re Agent Orange Product Liability Litigation, 506 F. Supp. 737 (E.D.N.Y. 1979), *aff'd in pertinent part*, 635 F.2d 987 (2d Cir. 1980), *cert. denied*, 454 U.S. 1128 (1981) 5
In re Flowers v. Sullivan, 545 N.Y.S.2d 289 (App. Div. 1989) 8
Ivy v. Diamond Shamrock Chemicals Co., 996 F.2d 1425, 1431 (2d Cir. 1993) . . . . . *passim*
Johnson v. American Airlines, Inc., 157 Cal.App.3d 427, 203 Cal. Rptr. 638 (Cal. App. 1984) 8
Kline v. Burke Construction Co., 260 U.S. 229 (1922) . . . 8
LeCroy v. Hanlon, 713 S.W.2d 335 (Tex. 1986) 1
Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149 (1908) 8
Merrell Dow Pharmaceuticals Inc. v. Thompson, 478 U.S. 804 (1986) 4
Michigan v. Long, 463 U.S. 1032 (1983) 7
Murdock v. Memphis, 87 U.S. (20 Wall.) 590 (1875) 7
New York v. United States, 112 S.Ct. 2408 (1992) 10
Pennzoil Co. v. Texaco, Inc., 481 U.S. 1 (1987) . . . 7, 11-13
Riggs v. Johnson County, 73 U.S. 166 (1868) 9

TABLE OF AUTHORITIES (cont.)

Cases: **Page**

Rose v. Lundy, 455 U.S. 509 (1982) 7
Ryan v. Dow Chemical Co., 781 F. Supp. 902 (E.D.N.Y. 1991) . . . . . *passim*
Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100 (1941) 10
Speight v. Slayton, 415 U.S. 333 (1974) 11
Stone v. Powell, 428 U.S. 465 (1976) 7
Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806) . . . 10
Tafflin v. Levitt, 110 S.Ct 792 (1990) 7
Taylor v. Liberty Nat'l Life Ins. Co., 462 So.2d 907 (Ala. 1984) 8
Travelers Indemnity Co. v. Sarkisian, 794 F.2d 754 (2d Cir.), *cert. denied*, 479 U.S. 885 (1986) 5, 8
Ultramar America Ltd. v. Dwelle, 900 F.2d 1412 (9th Cir. 1990) 8
United States v. Hudson & Goodwin, 11 U.S. (7 Cranch) 32 (1812) 6
Yellow Freight System, Inc. v. Donnelly, 110 S.Ct. 1566 (1990) 7
Younger v. Harris, 401 U.S. 37 (1971) 11
Zahn v. Int'l Paper Co., 414 U.S. 291 (1973) 10

Constitutional Provisions, Statutes and Rules:

Eleventh Amendment 7
Full Faith and Credit Clause, Art. IV, § 1 3
Tenth Amendment 10-11
28 U.S.C. § 1331 5
28 U.S.C. § 1441(a) 4-5
28 U.S.C. § 1651(a) . . . . . *passim*
42 U.S.C. § 1983 12
Fed. R. Civ. P. 8(c) 8

TABLE OF AUTHORITIES (cont.)

Miscellaneous: **Page**

Erwin Chemerinsky, FEDERAL JURISDICTION, § 5.5 (1989) 11
The Debate on the Constitution (Bernard Bailyn, ed., 1993) 6
John Friedenthal, M. Kane, and Arthur Miller, CIVIL PROCEDURE 63 (1985) 11
Patrick Henry and James Madison, *Patrick Henry Elaborates His Main Objections and James Madison Responds* (Responsive speeches, June 12, 1788) 2 Bailyn 673 6
John Marshall, *On the Fairness and Jurisdiction of Federal Courts* (June 20, 1788), 2 Bailyn 730 6
George Mason, *Fears [Concerning] the Power of Federal Courts: What Will Be Left to the States?* (Speech, June 19, 1788) 2 Bailyn 720 6
George Mason, *Objections to the Constitution* (Nov. 22, 1787) 1 Bailyn 345 6
"Publius" [Alexander Hamilton], *The Federalist No. 82: State and Federal Courts: Concurrent Jurisdiction?* (May 28, 1788) 2 Bailyn 493 6

INTEREST OF *AMICI*

This brief *amici curiae* is submitted by 45 States and the District of Columbia. Our purpose is to inform this Court of the grave threat that the decision of the Second Circuit below poses both to the statutory jurisdictional framework of the federal courts and to core principles of judicial federalism. We agree with petitioners that this decision, which reflects a clear conflict between the circuits, embraces a drastic and disturbing removal doctrine, one that authorizes a federal court to disregard the seven specific removal provisions enacted by Congress and to remove a case from a state court whenever it suits the perceived needs of the federal court. *See* Petition at 2, 7-25.

In exercise of one of their most fundamental powers as sovereign States, *amici* have created judicial systems through which their citizens may seek redress for injuries done to them, and may thereby peacefully resolve disputes in accord with due process of law. Petitioners here, citizens of Texas, invoked the jurisdiction of the Texas court system to resolve tort claims arising solely under state law, only to have the federal courts accept removal of the suit and spirit it 1500 miles away to a federal tribunal in New York.

The courts below did not find that petitioners' case could have been brought in a federal district court in the first instance. Rather, the explanation proffered for this federal interference with state court litigation is the defendants' contention that the instant suit is precluded by a settlement in a prior federal class action — a routine claim that the district court below assumed to be beyond the ability of a state court to resolve. Such an assumption is an insult to state courts and a violation of the most fundamental principles of federalism. *Amici* thus submit this brief in defense of the substantial state interest in ensuring unfettered access by their own citizens to their own courts to resolve state law disputes,[1] without unwarranted, *ad hoc* interference by the federal judiciary.

---

[1] The State of Texas wishes to draw the Court's particular attention to the "open courts" provision of its Constitution. *LeCroy v. Hanlon*, 713 S.W.2d 335, 338-41 (Tex. 1986).

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case involves tort claims brought under Texas law in a Texas state court by Texas plaintiffs against a Texas defendant and other defendants. Defendants based their petition for removal and their motion for dismissal on the supposition that "the [petitioners'] claims have already been asserted and adjudicated in federal court." *Ryan v. Dow Chemical Co.*, 781 F. Supp. 902, 913 (E.D.N.Y. 1992); Appendix to Petition ("A___") A45. Examining its earlier judgment and orders in the *Agent Orange Product Liability Litigation* (hereafter "*Agent Orange Litigation*"), the district court agreed and, concluding that "the Settlement Agreement compromised their claims," 781 F. Supp. at 915; A49, dismissed all of petitioners' claims. *Id.* at 920; A59.

The remarkable thing about the district court's decision — and the aspect of that ruling that provoked the filing of a brief *amici curiae* by 21 States in the Second Circuit below — is that this routine preclusion issue was not litigated in the Texas state court where the suits were brought. Instead, the case was removed to a federal district court in Texas and then transferred by the Multidistrict Panel to the U.S. District Court for the Eastern District of New York, where the Settlement Agreement had been entered, and where the federal district court had reserved jurisdiction in order to disburse funds pursuant to the Settlement Agreement.

The district court opined that the question posed was: "[W]hether members of a class whose action was brought and is still pending in federal court can circumvent the effect of a federal judgment by bringing new actions in a state court relying exclusively on state law." 781 F. Supp. at 912; A42. The district court answered that question "in the negative." *Id.* The Second Circuit reached the same conclusion. Although the Second Circuit recognized in passing that the Texas state court had authority to "decid[e] the scope of the *Agent Orange I* class action and settlement," *Ivy v. Diamond Shamrock Chemicals Co.*, 996 F.2d 1425, 1431 (2d Cir. 1993); A9, and although the Second Circuit further conceded that it was "not unmindful of the fact that the All Writs Act is not a jurisdictional blank check," *id.*, it ultimately held that removal was justified because it thought that

the district court was the court "best situated" to determine the preclusive effect of its own prior rulings and because it believed that the district court was the court best able to "guard[] the integrity of its rulings in complex multidistrict litigation over which it had retained jurisdiction." 996 F.2d at 1431; A9.

The Second Circuit's concerns are misplaced. If there has indeed been an attempt by a party bound by a prior federal class action (or any other kind of) judgment to relitigate the case in a state forum, then the attempt may be resolved in its entirety by the application of well-established preclusion doctrines, based on the meaning of the contract that settled the earlier litigation and in light of applicable rules and constitutional principles.

In our view, the defendants' odyssey from Orange County, Texas to Brooklyn, New York, and hence the instant petition for *certiorari* that we urge the Court to grant, raises a question altogether different than the one posed and answered by the courts below: *which* court decides the preclusive effect of a prior lawsuit? For as long as there has been a common law the answer to this question has been plain: whenever a prior judgment of a court in another jurisdiction (state or federal) is raised as a bar to litigation of a claim, the issue is decided by the court at hand, not referred back to the court that entered the original judgment. In our judicial system this rule is dictated by, among other things, fundamental principles of comity and federalism, and the Full Faith and Credit Clause, Art. IV, § 1.

The decision below has supplanted this principled and time-tested rule with a radical and new one: whenever a federal class action judgment is involved, *only* one judge — only the individual judge who "entered the [original] judgment," 996 F.2d at 1431; A9 — is qualified to decide the preclusive effect of that judgment. Furthermore, in order to effect this rule in this case the courts below had to follow a second rule, relying upon an expansive reading of the All Writs Act to hold that, regardless of what Congress may have intended in otherwise carefully circumscribing federal statutory removal jurisdiction, that Act provides an inexhaustible font of judicially divined removal jurisdiction. As convincingly explained at pp. 12-23 of the Petition, these

rules are not only contrary to common sense and centuries of common law judicial practice, but are also contrary to the statutory removal scheme, inconsistent with the Constitution, and destructive of judicial federalism.

ARGUMENT

CERTIORARI SHOULD BE GRANTED IN ORDER TO RESTRAIN THE LOWER FEDERAL COURTS FROM CREATING THEIR OWN REMOVAL JURISDICTION AND, IN SO DOING, INTRUDING UPON THE RIGHTS OF THE STATES AND DISREGARDING THE PRINCIPLES OF JUDICIAL FEDERALISM

This is a case about removal. Yet the district court opinion *did not even cite*, much less discuss, the statutory basis for removal jurisdiction. Instead, the district court simply opined that in its view the All Writs Act, 28 U.S.C. § 1651(a), "permits a federal court to remove state actions to federal court [even] in situations where *specific statutory removal authority is absent*." 781 F. Supp. at 918; A55 (emphasis added). On appeal, the Second Circuit agreed that "a district court, in exceptional circumstances, may use its All Writs authority to remove an *otherwise unremovable* state court case." 996 F.2d at 1431; A8 (emphasis added).

We agree with petitioners that these holdings cannot be squared with either the overall design or the unambiguous history of the statutory removal structure crafted by Congress. It is not surprising that the other circuits addressing this issue have rejected the Second Circuit's view. *See* Petition at 11-12 & n.14. Moreover, as petitioners note, there are significant grounds to question the Second Circuit's interpretation of the All Writs Act. *See* Petition at 12-19. The general federal question removal statute, 28 U.S.C. § 1441(a), provides that a district court may exercise jurisdiction on removal of "any civil action brought in a State court of which the district courts of the United States have original jurisdiction." Thus, "a defendant may remove a case only if the claim could have been brought in federal court" in the first place. *Merrell Dow Pharmaceuticals Inc. v. Thompson*, 478 U.S. 804, 808 (1986). But that requirement cannot be met in this case. Signifi-

cantly, the courts below did *not* hold that petitioners' claims could have been brought in a federal court, and with good reason: there was absolutely no basis for federal jurisdiction.

As the district court itself found, "diversity jurisdiction is lacking." 781 F. Supp. at 914; A47. Nor is federal question jurisdiction available under 28 U.S.C. § 1331. "Normally, removal based on federal question jurisdiction is improper unless a federal claim appears on the face of a well-pleaded complaint." *Travelers Indemnity Co. v. Sarkisian*, 794 F.2d 754, 758 (2d Cir.), *cert. denied*, 479 U.S. 885 (1986). No such federal claim exists in this case because, as the district court conceded, the complaint pleads only state law causes of action and "expressly disclaims reliance on federal law." 781 F. Supp. at 913; A45. Moreover, as a matter of law, no well-pleaded federal claim could appear on the face of the complaint because the Second Circuit had previously *held* that Agent Orange tort suits raise no claims under federal statutory or common law.[2] As the district court noted, the original Agent Orange class action involved state law claims exclusively, and federal subject-matter jurisdiction was predicated solely on diversity. 781 F. Supp. at 907; A34. Because petitioners' claims could not have been initially *brought* in a federal court, their claims could not have been subsequently *removed* to federal court under § 1441(a).

Any concern that petitioners are somehow "double-dipping" by attempting to relitigate claims that are barred by the result of

---

[2] It was determined early in the class action that no federal statutory causes of action were available to Agent Orange victims. *In re Agent Orange Product Liability Litigation*, 506 F. Supp. 737, 741-42 (E.D.N.Y. 1979), *aff'd in pertinent part*, 635 F.2d 987, 989 n.3, 991-92 n.2 (2d Cir. 1980), *cert. denied*, 454 U.S. 1128 (1981). At the same time, the Court of Appeals foreclosed the possibility of federal question jurisdiction under federal common law by specifically "reject[ing] the district court's conclusion that there is an identifiable federal policy at stake in this litigation that warrants the creation of federal common law rules." *Agent Orange Litigation*, 635 F.2d at 993. The Court of Appeals below also rejected the defendants' contention that plaintiffs' complaint was "artfully pleaded" and therefore violated the "well-pleaded complaint" rule. 996 F.2d at 1431; A8. Finally, the "well-pleaded complaint" rule specifically precludes the removal of a case based on the defendant's pleading of a *res judicata* defense, the very ground used by the courts below to remove this case. *Sarkisian, supra*, 794 F.2d at 761 n.10.

earlier litigation is no excuse to engineer new grounds for removal jurisdiction. "Double-dipping" is not a new or unusual threat and, as such, it has been adequately addressed for centuries by the common law doctrine of preclusion. A plaintiff who loses in one court and then sues on the same claim in another jurisdiction is subject to the defense that the matter is *res judicata*, "a thing adjudicated."

There is no sensible reason to suppose that the Texas court in which this suit was filed is incapable of handling the garden-variety preclusion issue presented here, which requires only the interpretation (under the applicable state law) of the contract that settled the class action lawsuit and the disposition of ancillary legal issues, such as class action procedures, personal jurisdiction, and due process. Indeed, the principles that animate our regime of judicial federalism and the fact that, consistent with those principles, state courts are deemed competent to resolve complicated questions of federal constitutional law, together mandate a supposition opposite to the one embraced by the courts below.[3]

---

[3] Chief among those principles, of course, is the axiom that the Second Circuit seems to have forgotten, that the jurisdiction of the federal courts, and the powers of the federal government generally, are of designedly limited scope, particularly when such powers trench upon those of the States. *See, e.g, United States v. Hudson & Goodwin*, 11 U.S. (7 Cranch) 32, 32 (1812) ("The powers of the general government are made up of concessions from the several states — whatever is not *expressly* given to the former, the latter expressly reserve.") (emphasis added).

Indeed, as recent historical scholarship makes clear, the 1787 debate over the ratification of the federal Constitution turned in large part upon Anti-Federalist demands, and Federalist concessions, that the federal courts be permitted to exercise only such jurisdiction as expressly authorized by the federal constitution and expressly provided by Congress, and to have such grants of authority narrowly construed, so as neither to abridge nor to frustrate the historic and plenary powers of the state courts. *The Debate on the Constitution* (Bernard Bailyn, ed., 1993). *See, e.g.*, John Marshall, *On the Fairness and Jurisdiction of Federal Courts* (June 20, 1788), in 2 Bailyn, *supra*, 730, 731-734; "Publius" [Alexander Hamilton], *The Federalist No. 82: State and Federal Courts: Concurrent Jurisdiction?* (May 28, 1788), in 2 Bailyn, *supra*, 493, 493-97; George Mason, *Fears [Concerning] the Power of Federal Courts: What Will Be Left to the States?* (June 19, 1788), in 2 Bailyn, *supra*, 720, 720-722; George Mason, *Objections to the Constitution* (Nov. 22, 1787), in 1 Bailyn, *supra*, 345, 347; Patrick Henry and James Madison, *Patrick Henry Elaborates His Main Objections and James Madison Responds* (June 12, 1788) in 2 Bailyn, *supra*, 673, 687.

The district court's unstated but critical assumption — that its prior judgment either would not be understood or would not be accorded full faith and credit by the Texas judiciary — is an affront to state sovereignty. As petitioners note, state courts have long been presumed competent to adjudicate questions of federal law, including federal constitutional law. *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 150 (1988). *See* Petition at 19-20 n. 28. "[P]roper respect for the ability of state courts to resolve federal questions presented in state-court litigation mandates that the federal court stay its hand." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 (1987).[4] Accordingly, "when a state proceeding presents a federal issue, even a pre-emption issue, the proper course is to seek resolution of that issue by the state court." *Chick Kam Choo, supra,* 486 U.S. at 149-50. *A fortiori,* this is the required course where the issue presented is one of routine common law rather than federal law, as is the case here.

After all, state courts and their colonial predecessors were handling preclusion matters without difficulty long before the federal courts and the federal Constitution even existed:

---

[4] The abstention doctrine, in all its various forms, is but one example of the numerous constitutional and statutory limits on federal judicial power, limits that were designed and have been construed to ensure the continued vitality of state courts as meaningful and functioning entities. Viewed together, these doctrines demonstrate the great lengths to which this Court has gone in order to preserve the jurisdiction of state courts to adjudicate disputes — and in order to safeguard our system of judicial federalism. *See, e.g.,* the *Erie* doctrine (*Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938)), the "adequate and independent state grounds" doctrine (*e.g., Murdock v. Memphis*, 87 U.S. (20 Wall.) 590, 619 (1875); *Michigan v. Long*, 463 U.S. 1032 (1983)), the "total exhaustion" rule (*e.g., Rose v. Lundy*, 455 U.S. 509, 518 (1982)), restrictions on federal habeas review (*e.g., Stone v. Powell*, 428 U.S. 465, 489-96 (1976); *Butler v. McKellar*, 494 U.S. 407, 414 (1990)); the concurrent jurisdiction doctrine (*e.g., Tafflin v. Levitt*, 110 S. Ct 792 (1990); *Yellow Freight System, Inc. v. Donnelly*, 110 S. Ct. 1566 (1990)), and the Eleventh Amendment (*e.g., Hans v. Louisiana*, 134 U.S. 1 (1890); *Atascadero St. Hosp. v. Scanlon*, 473 U.S. 234, 243 (1985); *Employees v. Dep't of Public Health and Welfare*, 411 U.S. 279, 285 (1973); *Edelman v. Jordan*, 415 U.S. 651, 672 (1974)).

In light of the historical development and continuing importance of these and other judicial federalism doctrines, the Second Circuit's reliance on nebulous language in the All Writs Act to create new federal jurisdiction and to limit the power of state courts is surely wrong and must be reversed.

> Early in the history of our country a general rule was established that state or federal courts would not interfere with or try to restrain each other's proceedings. That rule has continued substantially unchanged to this time. . . . "[B]oth the state court and the federal court, having concurrent jurisdiction, may proceed with the litigation at least until judgment is obtained in one of them which may be set up as *res judicata* in the other." . . . [W]hether or not a plea of *res judicata* in the second suit would be good is a question for the [second] court to decide.

Donovan v. City of Dallas, 377 U.S. 408, 412 (1964) (citations omitted). *See also Kline v. Burke Construction Co.*, 260 U.S. 229-30 (1922) ("Whenever a judgment is rendered in one of the courts . . . the effect of that judgment is to be determined by the application of the principles of *res judicata* by the [second] court."). Indeed, state courts have routinely been called upon to determine the existence and scope of the preclusive effect of prior federal class action judgments, and have competently undertaken those determinations. *See, e.g., In re Flowers v. Sullivan*, 545 N.Y.S.2d 289 (App. Div. 1989); *Johnson v. American Airlines, Inc.*, 157 Cal. App.3d 427, 203 Cal. Rptr. 638 (Cal. App. 1984); *Taylor v. Liberty Nat'l Life Ins. Co.*, 462 So.2d 907 (Ala. 1984); *Gagne v. Norton*, 453 A.2d 1162 (Conn. 1983).

The claim that a lawsuit is precluded by the outcome of earlier litigation is not a federal claim but a federal *defense*. *See Sarkisian*, *supra*, 794 F.2d at 761 n.10; *Ultramar America Ltd. v. Dwelle*, 900 F.2d 1412, 1416 n.6 (9th Cir. 1990); Fed. R. Civ. P. 8(c). And "since 1887 it has been settled law that a case may not be removed to federal court on the basis of a federal defense . . . even if the defense is anticipated in the plaintiff's complaint, and even if both parties admit that the defense is the only question truly at issue in the case." *Franchise Tax Bd. v. Laborers Vacation Trust*, 463 U.S. 1, 14 (1983). *See also Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908). The departure from this time-tested rule by the courts below is an unprecedented, unwise, and condescending interference with state judicial authority.

The sole justification by the Second Circuit for its decision to uphold the district court's exercise of removal jurisdiction is an untenable expansion of the All Writs Act. The Second Circuit's construction of the All Writs Act in this case constitutes an unnecessary and unprincipled enlargement of federal court powers, one that is in conflict with the construction adopted by other circuits, and one that is deeply invasive of settled statutory and constitutional doctrine. The All Writs Act simply provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). We fully agree with petitioners that this statute has nothing to do with conferring removal jurisdiction or any other kind of jurisdiction over a case. *See* Petition at 16-17. The All Writs Act only specifies certain powers of federal courts *once they are properly exercising jurisdiction over a case*. *Id.* But we wish to add that, even if § 1651(a) had something to do with conferring jurisdiction, as opposed to "aid[ing]" jurisdiction already extant, its use in this case to dislodge the right of Texas courts to determine the preclusion issues involved here would still be improper.

The reason is simple. As this Court explained long ago, the language of the All Writs Act mandates not just one, but two, express conditions for the proper invocation of the statute. Not only must federal jurisdiction already exist, but "the mode of process[] must be agreeable to the principles and usages of law," specifically "the principles and usages of law as known and understood in the State courts at the date of [the] enactment" of the All Writs Act. *Riggs v. Johnson County*, 73 U.S. 166, 190 (1868). Given the long-settled practice of preclusion issues being decided by the second court, *no* exercise of power under § 1651(a) could ever be justified by the view of the courts below that the Texas courts simply cannot be trusted to adjudicate this issue properly. Simply put, the Second Circuit's All Writs removal doctrine is wholly inconsistent with the well-settled "principles and usages of law" regarding preclusion.

It bears emphasis that the All Writs Act has been consistently construed for more than two centuries as serving the quite limited function of enabling federal courts already in possession of jurisdiction to exercise supplementary remedial authority solely in aid of

that jurisdiction, and not as a vehicle for creating jurisdiction where none already exists. There is, accordingly, no warrant whatever for the Second Circuit's dramatically new and expansive rendering of that statute so as justify creation of federal jurisdiction, particularly where such federal jurisdiction comes at the expense of state court jurisdiction.[5]

---

[5] This is especially so given this Court's circumspect reading of the Tenth Amendment, which pertinently provides that "[t]he powers not delegated to the United States by the Constitution . . . are reserved to the States . . . ." In *Gregory v. Ashcroft*, 111 S. Ct. 2395 (1991), this Court declined to read the Age Discrimination in Employment Act in such a fashion as to countenance interference with traditional policies of state judicial systems regarding the mandatory retirement of state judges. *Id.* at 2408. *See also New York v. United States*, 112 S. Ct. 2408, 2428 (1992) (Tenth Amendment precludes construction of federal statutes that would interfere with the "core" functions of state sovereignty, especially the ability of a state to "make and *apply* its own laws.") (emphasis added). *Gregory* and *New York v. United States* also stand for the postulate of statutory construction that Acts of Congress shall not read as impinging upon core state functions unless Congress provides a "clear statement" of precisely that intent. Indeed, in view of the inherently limited nature of federal courts and the importance of state court jurisdiction, in construing federal jurisdictional statutes this Court has endeavored always to read even express statutory grants of jurisdiction very narrowly, particularly when such grants even potentially impinge on the jurisdiction of state courts. *See, e.g., Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806) (limiting 28 U.S.C. § 1332 by requiring complete diversity); *Zahn v. Int'l Paper Co.*, 414 U.S. 291 (1973) (limiting 28 U.S.C. § 1332 by requiring that all plaintiffs in a class action lawsuit based on diversity meet the minimal amount in controversy requirement). Thus, even when Congress has specifically fashioned a grant of federal jurisdiction, this Court has assiduously labored to protect the prerogatives of state courts. Accordingly, this Court should reject the Second Circuit's attempt to trump state court jurisdiction on the basis of a statute, such as the All Writs Act, which plainly was not intended by Congress to serve that end.

Moreover, particularly with respect to the statutory removal scheme created by Congress, this Court has been extremely vigilant in sheltering the powers of state courts by limiting the reach of federal courts. Thus, this Court has confined the ambit of the removal statute to its literal terminology, and has extended no flexibility for expanded jurisdiction. *See, e.g., Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100 (1941) (limiting the reach of federal jurisdiction under 28 U.S.C. § 1441 by reading that section literally and narrowly so as to disallow removal by original "plaintiffs" even when they become counterclaim defendants); *American Fire & Cas. Co. v. Finn*, 341 U.S. 6 (1951) (reading 28 U.S.C. § 1441(c) narrowly so as to deny removal

Significantly, the courts below could not find a single case in which a federal district court had employed injunctive relief or had used any other power under the All Writs Act to effect the removal of litigation over a preclusion defense from a state court. Such a radical exercise of federal judicial power over state court proceedings has heretofore been unprecedented precisely because it is both unprincipled and entirely unnecessary. It is a "basic doctrine of equity jurisprudence that courts of equity should not act . . . when the moving party has an adequate remedy at law and will not suffer irreparable injury if denied equitable relief." *Younger v. Harris*, 401 U.S. 37, 43-44 (1971).[6]

If defendants are indeed entitled to prevail on their preclusion defense, as they contend, then an entirely adequate and prompt remedy at law awaits them when they raise that defense in the courts of Texas where this action was brought. This Court need not even go so far as to invoke *Younger* abstention in order to conclude that the routine federal judicial intervention augured by the decision below constitutes a breach of the walls of comity and federalism that have been erected by Congress and this Court to ensure the continued vitality of our nation's parallel state and federal judicial systems. *See Pennzoil v. Texaco*, 481 U.S. 1 (1987).

---

to non-diverse defendant in a case where plaintiff has "separate and independent claims," one against a diverse defendant and the other against a non-diverse defendant). *See generally* Erwin Chemerinsky, FEDERAL JURISDICTION, § 5.5, at 289 (1989); John Friedenthal, M. Kane, and Arthur Miller, CIVIL PROCEDURE 63 (1985).

Given this Court's reluctance to find authority for federal jurisdiction even where specific textual support exists for such a finding, *a fortiori*, this Court should grant review in this case in order to strike down the Second Circuit's appropriation of jurisdiction under the All Writs Act, where no textual support is present at all. By so doing, this Court could affirm the traditional jurisdictional preserve of state courts and strike down the Second Circuit's arrogation of authority to itself.

[6] *See also Speight v. Slayton*, 415 U.S. 333, 335 (1974) (defendants "could obtain full relief in the state court proceeding merely by moving to dismiss the state action, in accord with state procedural rules . . . . If that is the case, [they] could not now make any showing of irreparable injury by reason of the state court proceeding, and such a showing is of course required before the federal court could grant the equitable relief, apart from any special considerations involved in *Younger v. Harris*").

Given the circumstances of the case at bar, to allow the decision below to stand would be to invite every federal district court, in its discretion, to circumvent the removal statutes and other specific jurisdictional legislation and to transform the All Writs Act from a carefully cabined mechanism for assisting courts that already have jurisdiction into a general grant of federal jurisdiction and a broad license to interfere with state court proceedings. The decision below constitutes a serious intrusion on the state courts and an ill-advised erosion of judicial federalism. A grant of certiorari is therefore in order.

CONCLUSION

Several years ago the Second Circuit permitted a federal district court to step into state court litigation in Texas between two oil companies on the theory that the state courts were incapable of managing, or could not be trusted to handle, a dispute involving issues of federal law. An $11 billion judgment against one of the world's largest oil companies was at issue, and the federal district court was convinced that the stakes were simply too high to leave resolution of the federal issues involved to run-of-the-mill state tribunals. Despite the availability in that case, unlike here, of a federal cause of action under 42 U.S.C. § 1983, this Court unambiguously condemned that federal judicial condescension and promptly reversed the district court's interference, remanding the parties to the state courts from whence they came. *See Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987).

In an eerily parallel situation, in this case the Second Circuit has permitted a district court to effect a similar invasion of the prerogatives of state courts, this time by stripping a Texas trial court of jurisdiction over a case which (looking beyond the public debate over justice for Vietnam veterans) turns largely on garden-variety tort issues. Here, the invasion of federalism was rationalized based on the defendants' untested assertion that petitioners' state claims are barred by the preclusive effect of an earlier settlement. Resolution of that issue requires no analysis of a federal claim, but only the interpretation of a prior federal diversity case settlement.

Nor should the determination of the preclusive effect, if any, of the settlement be reserved to the federal courts on the ground that

petitioners' state actions are barred not by some ordinary federal judgment, but by a "federal class action judgment." 781 F. Supp. at 914; A48. Just as this Court stepped into the *Pennzoil* case to reject the notion that well-established principles of federalism may be disposed of whenever billions of dollars in judgments are at stake, this Court should reject the Second Circuit's notion that well-established federalism rules regarding removal may be superseded whenever millions of dollars in claims are at stake and these claims turn on the preclusive effect of an earlier mass-tort class action settlement.

The Second Circuit's decision invites state court defendants and federal district courts to remove cases from state courts whenever a prior federal judgment of any apparent importance is implicated. At minimum, if left undisturbed the decision below will exert an enormous magnetic pull: nationwide class actions typically may be filed in any circuit, and class action plaintiffs interested in offering maximum settlement value to defendants are likely to file within the Second Circuit as long as it remains the odd man out on this issue, and as long as the circuit conflict is as lopsided as it has thus far been. If other circuits that have so far taken a different view follow the Second Circuit (as some district courts in other circuits are already doing, *see* Petition at 11 & n.13), then other powerful magnets for such forum-shopping will exist. In any event, the circuit conflict itself is ample reason for review by this Court.

Apart from the conflict in the circuits, the expansion of federal jurisdiction embraced by the decision below is an illegitimate judicial amendment of Congress's removal statute, an unwelcome, unnecessary and vexatious source of new cases for already swamped federal dockets, and — most important to these *amici* — an invasion of state judicial independence and an insult to state courts throughout the nation, which are perfectly capable of deciding whether a state law claim is barred by a prior federal judgment, regardless of the stakes in the case. Accordingly, certiorari should be granted.

Respectfully submitted,

JAMES H. EVANS
ATTORNEY GENERAL OF
ALABAMA
11 South Union Street
Montgomery, Alabama 36130
(205) 242-7300

DAN MORALES
Counsel of Record
ATTORNEY GENERAL OF
TEXAS
Capitol Station, Box 12548
Austin, TX 78711
(512) 463-2191

CHARLES E. COLE
ATTORNEY GENERAL OF
ALASKA
Post Office Box 110300
Juneau, AK 99811
(907) 465-3600

GRANT WOODS
ATTORNEY GENERAL OF
ARIZONA
1275 West Washington Street
Phoenix, AZ 85007
(602) 542-5025

WINSTON BRYANT
ATTORNEY GENERAL OF
ARKANSAS
200 Tower Building, 323 Center St.
Little Rock, AR 72201
(501) 682-2007

DANIEL E. LUNGREN
ATTORNEY GENERAL OF
CALIFORNIA
1515 K Street
Sacramento, CA 95814
(916) 324-5437

GALE A. NORTON
ATTORNEY GENERAL OF
COLORADO
1525 Sherman Street
Denver, CO 80203
(303) 866-3052

RICHARD BLUMENTHAL
ATTORNEY GENERAL OF
CONNECTICUT
55 Elm Street
Hartford, CT 06106
(203) 566-7279

CHARLES M. OBERLEY, III
ATTORNEY GENERAL OF
DELAWARE
820 North French Street
Wilmington, DE 19801
(302) 577-2500

JOHN PAYTON
CORPORATION COUNSEL OF
THE DISTRICT OF COLUMBIA
441 Fourth Street, N.W.
Washington, D.C. 20001
(202) 727-6252

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL OF
FLORIDA
The Capitol
Tallahassee, FL 32399
(404) 488-1573

MICHAEL J. BOWERS
ATTORNEY GENERAL OF
GEORGIA
40 Capitol Square, S.W.
Atlanta, GA 30334
(404) 656-4585

ROBERT A. MARKS
ATTORNEY GENERAL OF
HAWAII
425 Queen Street
Honolulu, HI 96813
(808) 586-1360

ROLAND W. BURRIS
ATTORNEY GENERAL OF
ILLINOIS
100 West Randolph Street
Chicago, IL 60601
(312) 814-2503

BONNIE J. CAMPBELL
ATTORNEY GENERAL OF
IOWA
Hoover State Office Building
Des Moines, IA 50319
(515) 281-5164

CHRIS GORMAN
ATTORNEY GENERAL OF
KENTUCKY
Capitol Building, Suite 116
Frankfort, KY 40601
(502) 564-4002

MICHAEL E. CARPENTER
ATTORNEY GENERAL OF
MAINE
State House Station #6
Augusta, ME 04333
(207) 626-8800

SCOTT HARSHBARGER
ATTORNEY GENERAL OF
MASSACHUSETTS
One Ashburton Place
Boston, MA 02108
(617) 727-2200

LARRY ECHOHAWK
ATTORNEY GENERAL OF
IDAHO
Statehouse, Room 210
Boise, ID 83720
(208) 334-2400

PAMELA FANNING CARTER
ATTORNEY GENERAL OF
INDIANA
219 State House
Indianapolis, IN 46204
(317) 232-6201

ROBERT T. STEPHAN
ATTORNEY GENERAL OF
KANSAS
Kansas Judicial Center
Topeka, KS 66612
(913) 296-2215

RICHARD P. IEYOUB
ATTORNEY GENERAL OF
LOUISIANA
State Capitol
Baton Rouge, LA 70804
(504) 342-7013

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL OF
MARYLAND
200 St. Paul Street
Baltimore, MD 21202
(410) 576-6300

FRANK J. KELLEY
ATTORNEY GENERAL OF
MICHIGAN
525 West Ottawa Street
Lansing, MI 48913
(517) 373-1110

HUBERT H. HUMPHREY III
ATTORNEY GENERAL OF
MINNESOTA
102 State Capitol
St. Paul, MN 55155
(612) 297-4272

MIKE MOORE
ATTORNEY GENERAL OF
MISSISSIPPI
450 High Street
Jackson, MS 39205
(601) 359-3680

JOSEPH P. MAZUREK
ATTORNEY GENERAL OF
MONTANA
215 North Sanders
Helena, MT 59620
(406) 444-2026

DON STENBERG
ATTORNEY GENERAL OF
NEBRASKA
2115 State Capitol
Lincoln, NE 68509
(402) 471-2682

JEFFREY R. HOWARD
ATTORNEY GENERAL OF
NEW HAMPSHIRE
25 Capitol Street
Concord, NH 03301
(603) 271-3658

FREDERICK P. DeVESA
ACTING ATTORNEY GENERAL
OF NEW JERSEY
R.J. Hughes Justice Complex
Trenton, NJ 08625
(609) 292-4925

TOM UDALL
ATTORNEY GENERAL OF
NEW MEXICO
Post Office Drawer 1508
Santa Fe, NM 87504
(505) 827-6000

G. OLIVER KOPPELL
ATTORNEY GENERAL OF
NEW YORK
State Capitol
Albany, NY 12224
(518) 474-8101

MICHAEL F. EASLEY
ATTORNEY GENERAL OF
NORTH CAROLINA
Post Office Box 629
Raleigh, NC 27602
(919) 733-3377

HEIDI HEITKAMP
ATTORNEY GENERAL OF
NORTH DAKOTA
600 East Boulevard Avenue
Bismarck, ND 58505
(701) 224-2210

LEE FISHER
ATTORNEY GENERAL OF
OHIO
30 East Broad St., 17th Floor
Columbus, OH 43266
(614) 466-3376

SUSAN B. LOVING
ATTORNEY GENERAL OF
OKLAHOMA
2300 N. Lincoln Blvd., Ste. 112
Oklahoma City, OK 73105
(405) 521-3921

ERNEST D. PREATE, JR.
ATTORNEY GENERAL OF
PENNSYLVANIA
Strawberry Square
Harrisburg, PA 17120
(717) 787-3391

MARK BARNETT
ATTORNEY GENERAL OF
SOUTH DAKOTA
500 East Capitol Avenue
Pierre, SD 57501
(605) 773-3215

JAN GRAHAM
ATTORNEY GENERAL OF
UTAH
236 State Capitol
Salt Lake City, UT 84114
(801) 538-9600

STEPHEN D. ROSENTHAL
ATTORNEY GENERAL OF
VIRGINIA
101 North 8th Street
Richmond, VA 23219
(804) 786-2435

JAMES E. DOYLE
ATTORNEY GENERAL OF
WISCONSIN
123 West Washington Avenue
Madison, WI 53707
(608) 266-1221

JEFFREY B. PINE
ATTORNEY GENERAL OF
RHODE ISLAND
72 Pine Street
Providence, RI 02903
(401) 274-4400

CHARLES W. BURSON
ATTORNEY GENERAL OF
TENNESSEE
500 Charlotte Avenue
Nashville, TN 37243
(615) 741-6474

JEFFREY L. AMESTOY
ATTORNEY GENERAL OF
VERMONT
109 State Street
Montpelier, VT 05609
(802) 828-3171

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL OF WEST
VIRGINIA
State Capitol, Room E-26
Charleston, WV 25305
(304) 558-2021

JOSEPH B. MEYER
ATTORNEY GENERAL OF
WYOMING
123 Capitol Building
Cheyenne, WY 82002
(307) 777-7841

Counsel for *Amici Curiae*

January 6, 1994